



Citizens Utility Board

309 W Washington St, Suite 800, Chicago, IL 60604 **Phone** (312) 263-4282 **Toll Free** 800-669-5569 **Fax** (312) 263-4329

January 8, 2015

Illinois Commerce Commission
ATTN: Torsten Clausen
Office of Retail Market Development

Re: 14-NOI-01 Notice of Inquiry Regarding Retail Electric Market Issues

INTRODUCTION

In these Surreply Comments, the Citizens Utility Board (CUB) will attempt to address issues raised in the workshops regarding the marketing of Retail Electric Suppliers' ("RES") products and to further refine CUB's positions and recommendations with an eye toward protecting consumers and designing an effective electric market that brings benefits to consumers.

Variable Rate Offers-

1. *What type of disclosure requirements do you believe are necessary for variable rate offers to ensure consumers understand that the rate fluctuates?*

CUB continues to propose that RES be required to disclose historic variable prices over the previous twelve months to residential RES customers on variable rate plans. Specifically, CUB recommends that the supplier include a chart in its marketing material and in the customer contract showing the highest and the lowest rate charged by the supplier to its residential customers on variable rate plans for each of the previous twelve months. Though certain suppliers claim this information cannot reasonably be disclosed because they engage in customized pricing for residential customers, this information is certainly ascertainable and would serve as a useful gauge for customers to understand the range of risk associated with a variable product. Unless a cap is imposed on variable rates, residential customers have absolutely no protection from and no control over the variable rate they will be charged. Because of this, it would assist residential customers in evaluating their risk by being on notice of the range of rates charged by the supplier marketing them the variable rate product.

Additionally, CUB proposes that the Illinois Power Agency price per kwh should be displayed on all bills as the price to compare. ComEd protests in their Reply comments that such an addition to bills is not a good idea for a number of

reasons. (ComEd Reply at 2-3). The key point of disagreement appears to be whether the utility rate is, in fact, the appropriate “default” rate, or “price to compare.” CUB believes that, because the utility remains the provider of last resort if one does not choose a supplier (and there is no requirement that customers choose a supplier in Illinois), then the utility supply rate is the rate that customer would pay. Including the default IPA regulated supply rate on customers’ bills will assist with consumer understanding of the electric market, because customers can see how their ARES rate compares to the current regulated supply price for that month. While this represents a short term snapshot, it is never the less a legitimate comparison for a relevant point in time and provides the consumer with a valuable gauge with which to compare ARES offers and rates.

2. *Should the Commission adopt a requirement that the supplier provide the customer with a formula or method by which the variable rate is determined?*

After workshop discussions regarding the nature of the types of products currently being offered in Illinois, it is clear most variable rate products are what suppliers refer to as “monthly managed products,” which are similar in structure to a Purchased Gas Adjustment (“PGA”) charge. If the suppliers are correct that revealing this procurement management plan is proprietary, then there may be other issues surrounding the publication of such a methodology. However, if the variable rate notification provisions discussed below are strengthened to provide actionable information to consumers regarding their variable rate, with sufficient time to allow for a switch of suppliers or switch back to the utility, then the publication of the rate methodology becomes less critical.

3. *Should the Commission adopt a requirement that a residential variable rate has to be tied to a publicly available index/benchmark?*

No. As has been discussed at the workshops, it is clear that very few, if any, residential product offerings in Illinois are index products. This question appears to more closely relate to information requirements regarding variable rates than regulation of product offerings themselves. CUB believes the intent of the question is figure out a way to provide consumers with more information regarding their variable rate so they are on notice as to the rate they will be charged each month. These issues are addressed above and below.

4. *Should the Commission adopt additional notice requirements for variable rate changes?*

Yes. As discussed in ICEA’s reply comments and at the workshops, the RES should be required to notify its customers of the rate for their following month’s

supply either on each monthly bill or in a print or electronic communication, prior to the month the charges will be begin to be incurred under the new rate (see #7 below for more details on this issue). This practice would allow customers to compare their variable rate to the relevant utility rate in order to determine whether to continue with the RES offer or switch back to the utility. This disclosure, as well as the historical disclosure described in response to question #1 above, would be helpful information for consumers who have enrolled with a RES for their electric supply on a monthly variable rate.

5. *Should the Commission require suppliers to set and disclose a maximum rate for each residential variable rate offer?*

Yes, CUB continues to believe this requirement would protect consumers from the dramatic price spikes observed in the market during the 2014 polar vortex.

6. *Should sales of variable rate offers be prohibited from implying future savings unless the basis for such implied savings is provided?*

Yes, for all the reasons identified in CUB's initial comments.

7. *Should the Commission require suppliers to provide its customers with readily available access to rates, including historical rates and current rates, as well as imminent changes to the rates?*

Yes. CUB agrees with ICEA that the market would significantly benefit if suppliers were required to provide customers on a managed monthly product with the upcoming month's rate between 45 and 60 days prior to that month's start. CUB also agrees with ICEA that notice requirements around Index products should focus on clear and concise disclosure of the product before a customer signs up for it, which includes a description of the underlying index upon which the rate is based. CUB further suggests that such disclosure be included in the ARES contract, the welcome letter and any other communication from the ARES to that customer.

CUB continues to believe that requiring the ARES to provide 12 months of historical rate data, including the highest rate and the lowest rate charged on any variable rate plan, is an important component of a transparent, well-functioning market that best serves consumers. Whether or not such information allows a consumer to predict future RES prices is not the central issue. Rather, historic information is valuable for consumers because it allows consumers to determine the range of risk to which they may be exposed. ICEA comments that historical pricing is irrelevant and meaningless, and that "instead of attempting to predict the future of the retail market based on past results, consumers should be

encouraged to carefully consider three factors: 1) their individual energy needs, consumption patterns and priorities, 2) their own view of potential future volatility and their individual risk tolerances and 3) the value propositions and potential risks of each product offering available to them in the marketplace today.” ICEA Reply Comments at 11. This advice is hardly helpful in a burgeoning marketplace like Illinois and represents ICEA’s misunderstanding of the consumer point of view.

To argue that consumers should rely on “their own view of potential future volatility” is absurd, considering the suppliers themselves argue that it is virtually impossible to predict the market price of electricity going forward. Arguing that no information is better than some information – however imperfect - is nonsensical and anti-consumer. As stated in the workshops, if an ARES has a track record of consistently raising its variable rate above the regulated IPA rate by orders of magnitude, you can be sure most consumers would want to know this information. Furthermore, ICEA’s suggestions presuppose the type of research and investigation that virtually no consumer has the time or ability to effectively conduct for a “product” that is undeniably life supporting. It simply cannot be the answer to leave consumers to the wolves of the marketplace. CUB continues to propose that historic information, though not perfect, provides at least some basic information about the supplier’s track record that could assist consumers in making an informed choice.

Renewable or “Green” Energy Offers

1. *Should the Commission define residential marketing terms such as “green” and “renewable” offers? If so, what should form the basis of such definitions?*

CUB continues to recommend that the definitions of “renewable” and “green” share the definition for “renewable energy” in Section 1-10 of the Illinois Power Agency Act *Should a “% renewable” column be added to the supplier offer matrix found on PlugInIllinois.org? If so, is the addition of such a column dependent on a Commission definition of “renewable energy”?*

CUB continues to propose that there should be two columns added to the supplier offer matrix: one strictly for a % of renewable energy secured through a Purchased Power Agreement (PPA), and one to indicate the % renewable energy credit. It is true the definition of “renewable energy resources” cited from the IPA Act does define “renewable energy resources” as both the energy and the renewable energy credit (REC). CUB’s suggestion here would not change that. CUB’s proposed two column addition to the supplier offer matrix would simply provide more disclosure to the consumer as to what % of the supplier’s

“renewable energy offer” is renewable energy acquired through a PPA and what % is comprised of RECs. The purpose of this proposal is to provide more information to consumers about the various RES “green” products, much of which may not be clear in the RES marketing material.

Defining Fixed and Variable Rates

1. *Should the Commission define “fixed” and “variable” rates? If so, how should such definitions impact the supplier offer matrix on PlugInIllinois.org?*

CUB agrees that defining these terms would assist in educating consumers about the various products being offered.

If you favor a Commission definition of “fixed” and “variable” rates, please provide and explain your proposed definitions.

CUB agrees with the Illinois Competitive Energy Association (“ICEA”) that the best approach to defining term “variable” may as a category rather than a singular description. CUB further agrees that the distinction between index and non-index variable products is important. However, CUB believes that ICEA’s proposed definition of an Index Variable product is over-complex and technical and could be simplified. CUB would like to discuss issues with this definition at the next workshop to work toward an agreed definition. The definition for Variable Non-Index price is more straightforward and is something CUB could support.

CUB would support ICEA’s proposed definition of “fixed,” if the period of time to be considered fixed were extended to six months.

In both workshops and comments ARES have argued that the IPA price is a variable price and should be subject to the same types of disclosures that may spring forth from this NOI. This argument is flawed as the IPA price is a regulated price, and built into the regulatory process are protections for consumers from unaffordable rates (20 ILCS 3855/1-5A), unlike ARES rates that remain unregulated. CUB therefore believes that the definition of fixed and variable should apply to ARES contracts only.

2. *Should the Commission adopt additional customer disclosure requirements for “fixed” offers that contain change-of-law contract clauses?*

Yes. Because this type of clause allows the RES to change the rate charged to the customer, special notification of this provision should be required. Additionally, change-of-law clauses in energy contracts are not something with which the average consumer has experience or familiarity, thus making

additional disclosures is reasonable and necessary. Such disclosures should be made in the sales pitch, during the third-party verification call, and in the contract, welcome letter and any other communication from the RES to its customer.

3. *Should the Commission adopt additional customer disclosure requirements for “fixed” offers that contain change-of-supplier-cost contract clauses?*

Yes. Because this type of clause allows the RES to change the rate charged to the customer, special notification of this provision should be required. Such disclosures should be made in the sales pitch, during the third-party verification call, and in the contract, welcome letter and any other communication from the RES to its customer. An additional notification should be sent to the customer disclosing when such clause is being invoked, and how it will change their rate.

4. *Should the Commission adopt additional customer disclosure requirements for “fixed” offers that contain other non-fixed rate components?*

If a product has any non-fixed rate components, then it should be considered “variable” and the associated disclosure requirements should apply. This includes “hybrid” rates that contain an initial promotional rate for a limited period of time (under 6 months), and then automatically switches to a variable rate.

Price-To-Compare

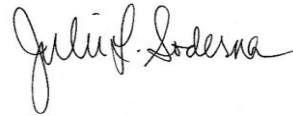
1. *Should the Commission specify how a supplier has to portray the utility Price-to-Compare?*

CUB continues to believe that the utility IPA rate, the price-to-compare, should be highlighted and placed on all utility bills, whether the customer is with a supplier or not. Such a requirement would go a long way towards helping consumers understand electric rates, and therefore economic implications of their choice of supplier.

Accelerated Switching

CUB believes that shortening switching times, when paired with the notification provisions discussed above, is an important consumer benefit that should be further explored. If a customer chooses a variable rate product that could rise substantially above the initial rate or the IPA default rate, that customer should be able to switch to either another supplier or back to the utility before being charged that rate, to avoid significant price spikes.

Respectfully,

A handwritten signature in black ink, reading "Julie L. Soderna". The signature is fluid and cursive, with the first name "Julie" and last name "Soderna" clearly legible.

Julie L. Soderna
Director of Litigation
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